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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Jose Francisco Puentes,

9 Petitioner,

10 v.

11 Charles L. Ryan, et al.,

12 Respondents.
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No. CV-17-01895-PHX-SPL

ORDER

15 The Court has before it Petitioner's Petition for Writ of Habeas Corpus pursuant to
16 28 U.S.C. § 2254 (Doc. 1). The Court has also received Respondents' Limited Answer
17 (Doc. 9), and Petitioner's Response to the Limited Answer (Doc. 10). We also have
18 before us the Report and Recommendation (R&R) of United States Magistrate Judge
19 John Z. Boyle (Doc. 11), Petitioner's Objections (Doc. 12), and the Response to the
20 Petitioner's Objections (Doc. 13).

21 Petitioner argues in Ground One that "Arizona Revised Statute (ARS) 13-1410 is
22 unconstitutional and improperly shifts the burden to the defendant from the prosecution."
23 (Doc. 1 at 6 and Ex. 1 at 2-8) In Ground Two, Petitioner argues he was "denied effective
24 assistance of counsel where counsel failed to challenge the constitutionality of ARS 13-
25 1410." (*Id.* at 7) Respondents argue the petition must be dismissed with prejudice (Doc.
26 9 at 6-16). Judge Boyle concluded the Petitioner's claims are procedurally defaulted
27 without excuse (Doc. 11 at 2-11).

28 A district judge "may accept, reject, or modify, in whole or in part, the findings or

1 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). When a party files
2 a timely objection to an R&R, the district judge reviews *de novo* those portions of the
3 R&R that have been “properly objected to.” Fed. R. Civ. P. 72(b). A proper objection
4 requires specific written objections to the findings and recommendations in the R&R. *See*
5 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); 28 U.S.C. §
6 636(b)(1). It follows that the Court need not conduct any review of portions to which no
7 specific objection has been made. *See Reyna-Tapia*, 328 F.3d at 1121; *see also Thomas v.*
8 *Arn*, 474 U.S. 140, 149 (1985) (discussing the inherent purpose of limited review is
9 judicial economy). Further, a party is not entitled as of right to *de novo* review of
10 evidence or arguments which are raised for the first time in an objection to the R&R, and
11 the Court’s decision to consider them is discretionary. *United States v. Howell*, 231 F.3d
12 615, 621-622 (9th Cir. 2000).

13 Petitioner has presented the same arguments that he initially made in his Petition
14 for Writ of Habeas Corpus. (Doc. 12.) This Court has, nonetheless, undertaken an
15 extensive review of the sufficiently developed record and the objections to the findings
16 and recommendations in the very detailed R&R, without the need for an evidentiary
17 hearing or appointing counsel for the Petitioner. After conducting a *de novo* review of the
18 issues and objections, the Court reaches the same conclusions reached by Judge Boyle.
19 Specifically, the Court finds the Petitioner claims are procedurally defaulted.

20 Having carefully reviewed the record, the Petitioner has not shown that he is
21 entitled to habeas relief. The R&R will be adopted in full. Accordingly,

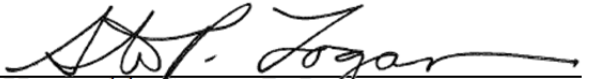
22 **IT IS ORDERED:**

- 23 1. That the Magistrate Judge’s Report and Recommendation (Doc. 11) is
24 **accepted** and **adopted** by the Court;
- 25 2. That the Petitioner’s Objections (Doc. 12) are **overruled**;
- 26 3. That the Petition for Writ of Habeas Corpus (Doc. 1) is **denied** and this
27 action is **dismissed with prejudice**;
- 28 4. That a Certificate of Appealability and leave to proceed *in forma pauperis*

1 on appeal are **denied** because the dismissal of the Petition is justified by a plain
2 procedural bar and reasonable jurists would not find the ruling debatable; and

3 5. That the Clerk of Court shall **terminate** this action.

4 Dated this 18th day of April, 2018

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6 Honorable Steven P. Logan
7 United States District Judge
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